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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,378	11/03/2003	William E. Talbot	4450-0408P	2753

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BIRCH STEWART KOLASCH & BIRCH  
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EXAMINER

SINGH, DALZID E

ART UNIT PAPER NUMBER

2633

DATE MAILED: 08/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/698,378	<b>Applicant(s)</b> TALBOT, WILLIAM E.	
	<b>Examiner</b> Dalzid Singh	<b>Art Unit</b> 2633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 15-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/03/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 15-23 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-9 of prior U.S. Patent No. 6,721,505. This is a double patenting rejection.

Claim 15 has the "scope" of invention identical to claim 1 of the patent, in that both claim a communication method, comprising the steps of:

transmitting a plurality of first optical signals along a first optical communication path segment, each of said plurality of first optical signals being at a respective one of a plurality of wavelengths;

extracting one of the wavelengths corresponding to one of said plurality of first optical signals from said first optical communication path segment;

supplying a second optical signal to a second optical communication path segment in response to said one of the wavelengths corresponding to one of said plurality of first optical signals;

successively extracting data constituting respective portions of information carried by said second optical signal at a plurality of locations provided along said second optical communication path segment.

Claim 16 has the "scope" of invention identical to claim 2 of the patent, in that both claim a method wherein said one of the wavelengths of said plurality of first optical signals is different than a wavelength of said second optical signal.

Claim 17 has the "scope" of invention identical to claim 3 of the patent, in that both claim a method wherein said one of the wavelength of said plurality of first optical signals is substantially the same as a wavelength of said second optical signal.

Claim 18 has the "scope" of invention similar to claim 4 of the patent, in that both claim a communication method, comprising the steps of:

successively modulating a first optical signals each at one of a plurality of groups of locations along a first optical communication path;

supplying a plurality of second optical signals each at a respective one of a plurality of wavelengths to a second optical communication path based on a respective one of said modulated first optical signals; and

supplying a plurality of additional optical signals to said second optical communication path, each of said second optical signals and said additional plurality of optical signals being at a respective one of a plurality of wavelengths.

Claim 19 has the "scope" of invention similar to claim 5 of the patent, in that both claim a communication method, comprising the steps of:

supplying a plurality of first optical signals to a first optical communication path segment, each of said plurality of first optical signals being at a respective one of a plurality of wavelengths;

successively modulating a second optical signal at a plurality of locations along a second optical communication path segment, said second optical signal being modulated in accordance with first data associated with said plurality of locations;

extracting one of said plurality of first optical signals from said first optical communication path segment, said one of said plurality of first optical signals carrying second data;

passing remaining ones of said plurality of first optical signals from said first optical communication path segment to a third optical communication path segment;

adding a third optical signal to said third optical communication path segment in response to said second optical signal; and

supplying a fourth optical signal to a fourth optical communication path segment in response to said extracted one of said plurality of first optical signals.

Claim 20 has the "scope" of invention identical to claim 6 of the patent, in that both claim a method further comprising the step of sensing portions of data carried by

Art Unit: 2633

said fourth optical signal at respective locations along said fourth optical communication path.

Claim 21 has the "scope" of invention identical to claim 7 of the patent, in that both claim a method wherein a wavelength of said one of said plurality of first optical signals and a wavelength of said third optical signal are substantially the same.

Claim 22 has the "scope" of invention identical to claim 8 of the patent, in that both claim a method wherein a wavelength of said one of said plurality of first optical signals and a wavelength of said third optical signal are different.

Claim 23 has the "scope" of invention identical to claim 9 of the patent, in that both claim a method wherein said first and third optical communication paths constitute portions of a looped optical communication path.

### ***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dalzid Singh whose telephone number is 703-306-5619. The examiner can normally be reached on Mon-Fri 8am - 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on 703-305-4729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2633

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DS

August 06, 2004

*David Singh*